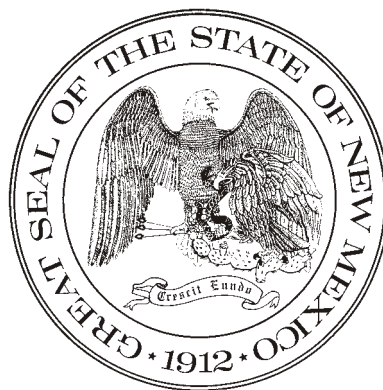


**NEW MEXICO STATE LEGISLATURE
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**2006
INTERIM REPORT**



December 2006

New Mexico Legislative Council Service
411 State Capitol
Santa Fe, New Mexico

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2006 WORK SUMMARY
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

During the 2006 interim, the Radioactive and Hazardous Materials Committee (RHMC) gathered information and heard testimony on numerous environmental and regulatory issues. In July, the committee traveled to Silver City and received an update on issues concerning the mining industry in New Mexico and the disposal of hazardous waste at the Camino Real landfill. The committee also heard testimony from the New Mexico Department of Environment (NMED) regarding the implementation of the concept of environmental justice into New Mexico's environmental laws, regulations and policies. In August, RHMC held a joint meeting with the Los Alamos National Laboratory (LANL) Oversight Committee to receive an update on the federal consent order for environmental remediation and cleanup at LANL and NMED's continuing staffing needs to implement the order. The committees also addressed the status of hazardous waste shipments to the Waste Isolation Pilot Plant (WIPP) from LANL and the new federal environmental impact statement for the labs.

This interim RHMC also held meetings in Carlsbad and Hobbs to receive updates on WIPP's permit modification to store remote-handled waste; implementation of new mine safety requirements passed by the legislature in 2006; and the progress of construction of the National Enrichment Facility in Eunice. In December, the committee heard testimony on NMED's budget and the department's legislative proposals for 2007. Additionally, the committee received an update on the uranium industry in New Mexico and planned efforts by a coalition of industry groups to reform New Mexico's administrative procedures. Throughout its interim meetings, the committee continued to hear testimony from concerned citizens and NMED officials on NMED's revised rules for septic tanks and other sewage treatment and disposal systems; and issues concerning the NMED's assumption of primacy over the National Pollution Discharge Elimination System.

RHMC endorsed one piece of legislation for the 2007 legislative session: the Uniform Environmental Covenants Act (UECA). The legislation provides for enforcement of use limitations on real property due to adverse environmental conditions. UECA helps to return previously contaminated property to the stream of commerce by allowing the owners of that property to engage in responsible cleanups and then transfer or sell the property subject to approved controls on its use.

Work Plan, Meeting Schedule & Budget

2006 APPROVED
WORK PLAN, MEETING SCHEDULE AND BUDGET
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

Members

Sen. Phil A. Griego, Chair
Rep. John A. Heaton, Vice Chair
Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Sen. John T.L. Grubestic
Rep. Manuel G. Herrera

Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Sen. Richard C. Martinez
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

Advisory Members

Rep. Thomas A. Anderson
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. William H. Payne

Sen. John Pinto
Rep. Nick L. Salazar
Rep. Avon W. Wilson

History

The Radioactive and Hazardous Materials Committee was created in 1979 by statute, Section 74-4A-9 NMSA 1978, to provide a means of coordinating information exchange and to develop appropriate state actions in relation to the Waste Isolation Pilot Plant (WIPP) near Carlsbad. The name of the committee was changed in 1983 and again in 1986 to more accurately reflect the scope of the committee's work, which was broadened by the legislature in 1981, 1986 and 1991. Over the years, the committee has continued to receive extensive testimony on a variety of subject matter relating to the environment. For example, in addition to hearing testimony on the progress of WIPP, the committee has received testimony on air and water quality, solid waste, ground water quality, mining, pipeline safety and other issues that require attention from the legislature in its deliberation of proposed environmental regulation.

Work Plan

During the 2006 interim, the Radioactive and Hazardous Materials Committee proposes to gather information and hear testimony on the three areas of focus adopted by the Legislative Council for the committee as well as other environmental issues. With regard to the three areas of focus, the committee plans to first monitor the New Mexico Department of Environment's (NMED's) progress in implementing the federal consent order on environmental remediation and cleanup at the Los Alamos National Laboratory. Second, the committee intends to review the status of WIPP's state permit modification to accept remote-handled waste and Louisiana Energy Services' permit applications for its uranium-enrichment plant near Hobbs. Third, the committee proposes to consider issues related to the NMED's intention to assume primacy over the federal Environmental Protection Agency's national pollutant discharge elimination system.

The committee also proposes to hear testimony on the implementation of new mine safety requirements enacted by the legislature in 2006, mining reclamation activities in New Mexico and other current issues affecting the mining and oil and gas industries. Additionally, the committee plans to assess the impacts of the NMED's implementation of new septic tank regulations, receive an update on the NMED's inspection activities to prevent food-borne illnesses and consider the inclusion of environmental justice in the NMED's community-based policies and planning initiatives. The committee also plans to review the budget and legislative and regulatory initiatives of NMED.

Finally, if needed, the committee proposes to develop appropriate legislation for the 2007 legislative session.

2006 APPROVED MEETING SCHEDULE

<u>Date</u>	<u>Location</u>
June 1	Santa Fe
July 11*	Silver City
August 9	Los Alamos
September 19-20	Carlsbad/Hobbs
December 1**	Santa Fe

*Meeting date originally approved by the Legislative Council was July 10.

**Meeting date originally approved by the Legislative Council was November 27.

Agendas

Revised: May 23, 2006

TENTATIVE AGENDA
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

June 1, 2006
Room 307, State Capitol

Thursday, June 1

10:00 a.m. **Call to Order**
 — Senator Phil A. Griego, Chair

Department of Environment: Update on Current Issues
 —Ron Curry, Secretary of Environment

11:00 a.m. **Development of 2006 Interim Work Plan, Meeting Schedule and Budget**

12:00 noon **Adjourn**

Revised: July 7, 2006

TENTATIVE AGENDA
for the
SECOND MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

July 11, 2006
Thomas McDonald Student Memorial Center, Sierra Conference Room
Western New Mexico University
1000 West College Ave
Silver City

Tuesday, July 11

- | | |
|------------|--|
| 10:00 a.m. | Call to Order
—Senator Phil A. Griego, Chair |
| | Welcome
—James Marshall, Mayor, Silver City
—Henry Torres, Chair, Grant County Commission
—Dr. John Counts, President, Western New Mexico University |
| 10:30 a.m. | Copper Mining Update
—Richard Peterson, Phelps Dodge Mining Company
—Tony Trujillo, Phelps Dodge Mining Company |
| 11:30 a.m. | Mining Issues in New Mexico: Overview and Upcoming Legislative Issues
—Mike Bowen, Executive Director, New Mexico Mining Association (NMMA)
—Leroy Apodaca, President, NMMA
—Tony Trujillo, NMMA Legislative Committee
—T.J. Trujillo, NMMA Legislative Committee |
| 12:30 p.m. | Lunch |
| 1:30 p.m. | Disposal of Hazardous Waste at the Camino Real Landfill: Update
—Ron Curry, Secretary of Environment |
| 2:00 p.m. | Environmental Justice
—Ron Curry, Secretary of Environment |

3:30 p.m.

**Sewage and Treatment Disposal Systems and Implementation of
Revised Rules for Septic Tanks: Local Concerns**

—Horace Jaramillo, Public Works Director, Grant County

—Debbie Rogers, Local Realtor

—Local Septic Pumpers (invited)

4:30 p.m.

Public Comment

4:45 p.m.

Adjourn

Revised: August 8, 2006

**TENTATIVE AGENDA
for the
JOINT MEETING
of the
LOS ALAMOS NATIONAL LABORATORY OVERSIGHT COMMITTEE
and
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**August 9, 2006
Conference Center Room 203, Los Alamos Research Park
Los Alamos**

Wednesday, August 9

- 9:00 a.m. **Call to Order**
—Representative Roberto "Bobby" J. Gonzales, Co-Chair, LANL
—Senator Phil A. Griego, Co-Chair, LANL, and Chair, RHMC
- Welcome to Los Alamos**
—Mike Wheeler, Chair, Los Alamos County Council
- 9:30 a.m. **Overview of the National Nuclear Security Administration's
Environmental Impact Statement for LANL**
—Elizabeth Withers, National Environmental Policy Act Compliance
Officer, Department of Energy
- 10:30 a.m. **Environmental Program Overview**
—Andrew Phelps, Associate Director for Environmental Programs, LANL
- 11:00 a.m. **Update on Consent Order Compliance**
—Gordon Dover, Program Director for Corrective Actions, LANL
—David McInroy, Deputy Program Director for Corrective Actions,
LANL
—James Bearzi, Bureau Chief, Hazardous Waste Bureau, NMED
- 12:00 noon **Working Lunch**
Ground Water Conceptual Model at LANL
—Dr. Ardyth Simmons, Program Manager, LANL
- 1:00 p.m. **Chromium Interim Measures Plan**
—Daniel Katzman, Program Manager, LANL
- 2:00 p.m. **NMED Update on LANL Issues**
—James Bearzi, Bureau Chief, Hazardous Waste Bureau, NMED

3:00 p.m.

Status of WIPP Shipments

—Gerald O'Leary, Program Director for Transuranic Waste Disposition,
LANL

3:45 p.m.

**Technical Area 21 Remediation Plan and Schedule Waste Disposal
Scenarios**

—Allan Chaloupka, Program Director for Technical Area 21 Closure,
LANL

—William Criswell, Deputy Program Director for Technical Area 21
Closure, LANL

4:45 p.m.

Public Comment

Adjourn

Revised: September 15, 2006

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**September 19, 2006
Pecos River Village Conference Center, Room #4
711 Muscatel Avenue, Carlsbad**

**September 20, 2006
Moran Multipurpose Room, New Mexico Junior College
5317 Lovington Highway, Hobbs**

Tuesday, September 19

- | | |
|------------|---|
| 10:00 a.m. | Call to Order
—Representative John A. Heaton |
| | Welcome
—Bob Forrest, Mayor, City of Carlsbad |
| 10:30 a.m. | Waste Isolation Pilot Project (WIPP): Status, Permits, Updates
—Dr. David Moody, Project Manager, WIPP
—James Bearzi, Chief, Hazardous Waste Bureau, New Mexico
Department of Environment (NMED) |
| 11:30 p.m. | Hazardous Waste Act Amendments
—James Bearzi, Chief, Hazardous Waste Bureau, NMED |
| 12:00 noon | Lunch |
| 1:30 p.m. | Federal Delegation: Introduction of Statute on National Pollutant
Discharge Elimination System (NPDES) Primacy
—Ron Curry, Secretary of Environment
—Cindy Padilla, Director, Water and Waste Management Division,
NMED
—Marcie Leavitt, Chief, Surface Water Quality Bureau, NMED |

3:00 p.m. **Mine Safety: Update on Implementation of HB 687 (2006) and
Proposed Interagency Mine Emergency Response Plan**
—Rebecca Boam, State Mine Inspector

Potash Mining Industry Concerns
—David Waugh, Mosaic Potash Carlsbad, Inc.
—Dale Janway, Intrepid Mining NM, LLC
—Jim Simpson, United Steelworkers Local 188

4:30 p.m. **Public Comment**

Recess

Wednesday, September 20

9:00 a.m. **Welcome**
—Harry Teague, Chairman, Board of County Commissioners, Lea County

9:30 a.m. **National Enrichment Facility Status: Report from Louisiana Energy
Services (LES)**
—Marshall Cohen, Vice President of Communications and Government
Relations, LES

National Enrichment Facility Permits Update
—Ron Curry, Secretary of Environment

11:00 a.m. **Waste Control Specialists**
—Dean Kunihiro, Senior Vice President for Licensing and Regulatory
Affairs

11:30 a.m. **Public Comment**

Adjourn

Revised: November 30, 2006

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**December 1, 2006
Room 317, State Capitol**

Friday, December 1

- 10:00 a.m. **Call to Order**
 —Senator Phil A. Griego, Chair
- Department of Environment Budget Overview**
 —Jim Perry, Director, Administrative Services Division
- 11:00 a.m. **Department of Environment Legislative Proposals (Bill Drafts #1-3)**
 —Cindy Padilla, Director, Water and Waste Management Division
 —Jim Norton, Director, Environmental Protection Division
 —James Bearzi, Chief, Hazardous Waste Bureau
 —Auralie Ashley-Marx, Chief, Solid Waste Bureau
- 12:15 p.m. **Lunch**
- 1:30 p.m. **NPDES Primacy: River Conservation Interests**
 —Rachel Conn, Amigos Bravos: Friends of the Wild Rivers
- 2:00 p.m. **New Mexico Office of Natural Resources Trustee (Bill Draft #4)**
 —Martin Heinrich, Natural Resources Trustee
- 2:30 p.m. **Update on the Uranium Industry in New Mexico**
 —Jon Indall, Esq., Comeau, Maldegen, Templeman and Indall
 —Juan Velasquez, Vice President of Environmental and Regulatory
 Affairs, Strathmore Minerals Corporation
 —Star Gonzales, Executive Director, Cibola County Economic
 Development
- 3:30 p.m. **Administrative Procedures Reform**
 —T.J. Trujillo, Lobbyist, Regulatory Justice
- 4:30 p.m. **Consideration of Legislation (Bill Drafts #1-3, 5)**
 —Committee Members and Staff

Public Comment

Adjourn

Minutes

**MINUTES
of the
FIRST MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**June 1, 2006
Room 307, State Capitol
Santa Fe**

The first meeting of the Radioactive and Hazardous Materials Committee was called to order by Representative John A. Heaton, vice chair, on Thursday, June 1, 2006, at 10:20 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Sen. Phil A. Griego, Chair
Rep. John A. Heaton, Vice Chair
Sen. Vernon D. Asbill
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Sen. Richard C. Martinez
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

Absent

Rep. Donald E. Bratton
Sen. John T.L. Grubescic

Advisory Members

Rep. Thomas A. Anderson
Sen. Mary Jane M. Garcia
Sen. William H. Payne
Rep. Nick L. Salazar

Sen. Clinton D. Harden, Jr.
Sen. John Pinto
Rep. Avon W. Wilson

Staff

Evan Blackstone
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Committee Business — Interim Meeting Schedule

The committee began with the members introducing themselves and selecting meeting dates and locations. Evan Blackstone noted that the Los Alamos National Laboratory Oversight Committee has requested a joint meeting with the Radioactive and Hazardous Materials Committee for August 9. The committee selected the following meeting dates and locations:

July 11

Silver City

August 9	Los Alamos
September 19-20	Carlsbad and Hobbs
November 27	Santa Fe

Department of Environment — Update on Current Issues

Ron Curry, secretary of environment, and Cindy Padilla, acting deputy secretary of environment, provided the committee with a brief update on various issues concerning the Department of Environment (NMED). Secretary Curry identified six main areas that NMED is currently addressing in 2006. First, he began by discussing the implementation of new rules for septic tanks and other sewage and treatment and disposal systems by NMED. Secretary Curry explained that the regulations primarily concern septic tanks and that the implementation of the new rules has caused some consternation. He emphasized that liquid waste is a priority to NMED because contamination from septic tanks is the largest source of ground water contamination in New Mexico.

Second, Secretary Curry discussed the revision of the solid waste regulations, which received a four-day hearing in May. He pointed out that the highlight of the revisions is the implementation of an environmental justice provision in the regulations and the effect of the provision on a number of solid waste permitting facilities.

Third, Secretary Curry outlined the recent hearings concerning the Waste Isolation Pilot Project's (WIPP) permit application to accept remote-handled waste (RHW). He noted that authorizing WIPP to handle RHW represents the most significant change to date to the WIPP permit. He also pointed out that a number of entities, including the Department of Energy, WIPP, the Southwest Research Institute and various environmental groups all have had input into the process.

Fourth, Secretary Curry discussed NMED's involvement in the prevention of food-borne outbreaks. He explained that NMED inspects all of the restaurants in the state, except for those in Bernalillo County, at least once a year. Secretary Curry indicated that the public generally takes safe restaurant food for granted but that the department is trying to elevate the issue. He also pointed out that the inspectors responsible for restaurants are also those responsible for inspecting septic tanks and public swimming pools.

Fifth, Secretary Curry informed the committee that Louisiana Energy Services (LES) has gained approval from the federal government for its proposed uranium enrichment facility in Lea County. The secretary stated that NMED is working with LES on the required ground water discharge and storm water discharge permits. He also noted that some management changes have occurred within LES during the past two months and that NMED is working well with the new management.

Finally, Secretary Curry discussed NMED's investigation of alleged violations of the Clean Water Act by the Phelps Dodge Mining Company, which were discovered at the Camino Real landfill in Sunland Park. He explained that the landfill was no longer accepting waste from Phelps Dodge until the issue is resolved and that a number of options are possible for addressing the waste that has already been placed at the facility. Secretary Curry also pointed out that Phelps Dodge has been very cooperative in the process.

Discussion focused on:

- the estimated number of cesspools present in New Mexico and efforts by NMED to try to move people toward methods of waste disposal that are less likely to contaminate the nearby environment;
- NMED's indigent fund, which helps those individuals who cannot afford to install septic tanks on their own;
- the presence of hazardous waste in landfills;
- synthetic liners for landfills;
- the effect of the Solid Waste Act environmental justice provision on small, unincorporated communities;
- whether septic tank regulations create an environment that allows monopolies and price gouging;
- septic tank alternatives in subdivision construction;
- ground water and air quality hearings concerning the Asarco smelter on the New Mexico border with Mexico; and
- inspection of meat processing plants by NMED and the New Mexico Department of Agriculture.

Committee Business — Interim Work Plan

The committee developed a work plan for the 2006 interim that encompasses a range of environmental issues. The proposed work plan contains the following three areas of focus adopted by the New Mexico Legislative Council for the committee to consider:

- the monitoring of NMED's progress in implementing the federal consent order on environmental remediation and cleanup at the Los Alamos National Laboratory;
- the status of WIPP's state permit modification to accept RHW and Louisiana Energy Services' permit applications for its uranium enrichment plant near Hobbs; and
- issues related to the NMED's intention to assume primacy over the federal Environmental Protection Agency's national pollutant discharge elimination system.

Members of the committee requested that certain topics be placed on the agenda. The committee also received input from guests present in the audience. In addition to the three areas of focus, the proposed work plan also contains the following items:

- the review of the implementation of new mine safety requirements enacted by the legislature in 2006;
- the receipt of updates on mining reclamation activities and other current issues affecting the mining and oil and gas industries in New Mexico;

- the assessment of the impacts of the NMED's implementation of new septic tank regulations;
- the receipt of updates on the NMED's inspection activities to prevent food-borne illnesses; and
- consideration of the inclusion of environmental justice in the NMED's community-based policies and planning initiatives.

Senator Griego reminded the committee that any member of the committee is welcome to add an item to a meeting agenda. He also suggested that representatives of NMED and the Governor's Office attend as many of the committee's meetings as possible.

There being no further business, the committee adjourned at 12:20 p.m.

**MINUTES
of the
SECOND MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**July 11, 2006
Sierra Conference Room, Thomas McDonald Student Memorial Center
Western New Mexico University
Silver City, NM**

The second meeting of the radioactive and hazardous materials committee was called to order by Representative John A. Heaton, vice chair, on Tuesday, July 11, 2006, at 10:00 a.m. in the Sierra conference room of the Thomas McDonald student memorial center at western New Mexico university in Silver City, New Mexico.

Present

Rep. John A. Heaton, Vice Chair
Sen. Vernon D. Asbill
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Sen. Richard C. Martinez
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

Advisory Members

Rep. Thomas A. Anderson
Sen. Mary Jane M. Garcia
Sen. John Pinto
Rep. Nick L. Salazar

Absent

Sen. Phil A. Griego, Chair
Rep. Donald E. Bratton
Sen. John T.L. Grubescic

Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Rep. Avon W. Wilson

Staff

Evan Blackstone
Jeret Fleetwood

Guests

Sen. Ben D. Altamirano

The guest list is in the meeting file.

Committee Business

The committee began by introducing members and the staff to the audience. Representative Heaton noted that Senator Griego had recently had a death in the family and would not be attending the meeting.

Welcome

James Marshall, mayor of Silver City, welcomed the committee to Silver City and thanked the members for holding the meeting in southwestern New Mexico. Mr. Marshall noted that Silver City has recently been addressing issues related to hazardous materials, pointing out that the city had recently used homeland security funds to purchase its own hazardous materials cleanup truck. He explained that, until recently, hazardous material cleanup had to be done by a truck from Las Cruces.

Senator Ben D. Altamirano also welcomed the committee to Silver City and discussed some of the economic development projects currently underway in Silver City, particularly revitalization of the city's downtown area.

Dr. John Counts, president of western New Mexico university, also welcomed the committee to Silver City and to western New Mexico university. He provided the committee with a brief background of the school and listed some of its recent achievements. Dr. Counts also noted that the school serves as a community college in western New Mexico, with off-campus sites in Deming and Gallup.

On a motion made, seconded and unanimously passed, the minutes of the June 1, 2006 meeting were approved as submitted.

Copper Mining Update

Tony Trujillo and Richard Peterson of Phelps Dodge mining company provided the committee with an update on copper mining in New Mexico. Mr. Peterson began by summarizing the economic impacts the copper mining industry has on New Mexico and Grant county. He noted an improvement in Phelps Dodge's financial results since 2002, explaining that the company's net income improved from a net loss of \$338 million in 2002 to a net income of \$1.56 billion in 2005. Mr. Peterson stated that the combined direct and indirect economic impact in New Mexico of Phelps Dodge's New Mexico operations in 2005 was \$741 million.

Next, Mr. Peterson discussed the worldwide copper market, informing the committee that Phelps Dodge is one of the world's leading copper producers. He also pointed out some of the end markets for refined copper, such as construction, transportation, electronics and various consumer products. Mr. Peterson went on to discuss mine production of the 10 largest copper producers across the globe and explained how the Asia-Pacific market has significantly increased the global demand for copper between 1994 and 2004.

Mr. Peterson highlighted the job creation by Phelps Dodge mining company within Grant county. Both Mr. Peterson and Mr. Trujillo listed the increasing number of employees at the

company's Chino and Tyrone mines and emphasized statistics that show mining is actually a safer industry for workers than manufacturing, construction and the education and health service fields.

Mr. Trujillo and Mr. Peterson discussed the dismantling of the smelters at the company's idle Hurley and Hidalgo facilities. They testified that the facilities are no longer required for copper production and highlighted the experience the company has with dismantling and salvage operations.

Next, Mr. Peterson discussed reclamation efforts at the company's Tyrone mine. He noted that 75 to 80 full-time employees are performing accelerated reclamation on the Tyrone site and provided the committee with slides showing the various stages of reclamation at the site. He also noted that reclamation crews will focus their attention on the Chino mine site once work on the Tyrone site is completed.

Finally, Mr. Trujillo and Mr. Peterson discussed a self-disclosure report released by Phelps Dodge in which the company disclosed violations of federal and state hazardous waste regulations. The report shows that in April, three Phelps Dodge mining operations voluntarily self-disclosed certain violations, including water quality regulations. While implementing a new system designed to help the company find such violations, Phelps Dodge discovered that hazardous waste regulation violations had occurred at three of the company's facilities: a refinery in El Paso, Texas, and the Tyrone and Chino mines in New Mexico. Mr. Trujillo and Mr. Peterson discussed the nature of the violations at each facility and emphasized that all problems were promptly corrected.

Questions and comments focused on:

- technologies that have replaced smelters to refine copper;
- molybdenum use in Asia;
- by-products of copper refining;
- projected increases in demand for copper worldwide;
- job opportunities for mine employees once the copper supply in the mines is exhausted;
- dependency of the mining industry on oil;
- impacts of the mining industry on air quality; and
- acquisition of Canadian mining operations by Phelps Dodge.

Mining Issues in New Mexico: Overview and Upcoming Legislative Issues

Mike Bowen, executive director of the New Mexico mining association (NMMA), provided the committee with a presentation regarding the importance of mining to New Mexico. He emphasized that mining is the bedrock of everyday life and that civilizations have been shaped by the use of minerals. Mr. Bowen stated that the United States consumes one-fourth of the globe's mineral production and imports a large amount of minerals. He informed the committee that New Mexico is ranked third in the nation for copper production, first in the production of potash and fifth in molybdenum production. He also discussed the economic

impacts of the mining industry in New Mexico, which include providing 6,000 jobs for New Mexicans.

T.J. Trujillo of the NMMA legislative committee provided the committee with an overview of NMMA's legislative priorities it plans to pursue during the 2007 legislative session. First, Mr. Trujillo encouraged the committee to once again endorse the Uniform Environmental Covenants Act for the upcoming session. He explained that the bill would provide the legal infrastructure for creating, changing and enforcing land use restrictions that assist in the cleanup of contaminated property. Mr. Trujillo noted that 10 states have enacted the Uniform Environmental Covenants Act and that the bill passed the New Mexico house of representatives in 2005 and 2006. The committee discussed various obstacles to the bill's passage, including allowing environmental covenants to apply to ground water. Representative Heaton expressed his desire that a compromise be reached on controversial language in the bill to ensure its passage in the next session.

The second legislative priority raised by Mr. Trujillo was the issue of regulatory justice. Mr. Trujillo explained that NMMA's view of regulatory justice is the need for New Mexico to establish a regulatory framework aimed at creating a formal decision-making methodology that is more uniform from agency to agency, balanced and fair to all parties, more conducive to careful deliberations and transparent. Mr. Trujillo stated that NMMA is working with other industry groups, trade associations and businesses that are concerned about executive agencies continuing to expand regulatory programs through rule making. He informed the committee that regulatory justice legislation includes concepts such as applying the Administrative Procedures Act to all agencies, establishing uniform inspection procedures and creating time frames for issuing licenses and permits. Representative Heaton requested that Mr. Trujillo provide the committee with a letter that contains specifics regarding the regulatory justice legislation the NMMA plans to present.

The final legislative priorities Mr. Trujillo discussed were the New Mexico department of environment's (NMED) intention to assume primacy over the National Pollutant Discharge Elimination System (NPDES) and potential Water Quality Act amendments. The NMED plans on introducing enabling legislation to assume NPDES primacy in the 2007 session, and Mr. Trujillo pointed out that NMMA believes the draft bill fails to adequately balance environmental stewardship over surface water quality with the reasonable needs of the business community. Lastly, Mr. Trujillo stated the New Mexico legislature may need to clarify its legislative intent on a few key concepts within the Water Quality Act, including the definition of "surface waters of the state".

Leroy Apodaca, president of NMMA, stated that he echoes the concerns addressed by Mr. Trujillo and the NMMA will continue to work with regulatory agencies in New Mexico although some problems exist.

Questions and comments focused on:

- whether the mining industry is currently working with NMED to reach some agreement on NPDES primacy.

Disposal of Hazardous Waste at the Camino Real Landfill: Update

Ron Curry, NMED secretary, provided the committee with an update on issues relating to the disposal of hazardous waste at the Camino Real landfill by Phelps Dodge. He explained that Phelps Dodge had recently recharacterized some of its waste streams and discovered that some of the waste being shipped to the Camino Real Landfill met the definition of hazardous waste. Mr. Curry pointed out that Phelps Dodge stopped shipping the waste after the recharacterization and that the company has taken steps to prevent such occurrences in the future. He emphasized that NMED has been on a positive course with Phelps Dodge, and that there has been a great deal of communication between NMED and Phelps Dodge, and he provided the committee with copies of NMED's correspondence with Phelps Dodge on the matter.

Secretary Curry also noted that the Camino Real landfill is no longer accepting waste from Phelps Dodge, but indicated that he does not anticipate any criminal charges being brought by the environmental protection agency or NMED against any of the parties involved. However, Secretary Curry stated that he does expect compliance orders and administrative notifications to be issued by NMED.

Secretary Curry went on to testify that, due to its location in southern New Mexico, the Camino Real landfill will always be controversial. He highlighted that the landfill is very well-run and that in its recent permit renewal application went above and beyond what is required for a permit reauthorization.

Dr. Mark Turnbough, representing the Camino Real landfill, explained to the committee that the landfill conducted a community impact assessment as a companion to its permit renewal application. The assessment evaluates the impacts of repermitting and includes community concerns addressed at hearings held by the landfill owner. The assessment studies traffic and noise levels, dust production and various other factors to determine the impacts the landfill has on the surrounding community.

Questions and comments focused on:

- Camino Real landfill's pending permit reauthorization;
- Camino Real landfill's previous use of a medical incinerator;
- new ownership of the landfill; and
- Camino Real landfill's location near an elementary school.

Environmental Justice

Secretary Curry and Derrith Watchman-Moore, NMED deputy secretary, explained to the committee the details of the concept of environmental justice and how the NMED decided to address the issue. They discussed that when they were first appointed, they heard multiple and repeated concerns that some citizens did not have a voice in the regulation process. They saw a need to fill a gap when it came to finding ways to communicate in the complicated regulatory

process. Secretary Curry and Deputy Secretary Watchman-Moore emphasized that environmental justice is not a new concept and it is geared to allow input from people who cannot pay for political influence or who do not have political clout. They stated that environmental justice tries to ensure that people are not disenfranchised when they have issues affecting their communities.

Secretary Curry and Deputy Secretary Watchman-Moore indicated that part of the desired communication involved listening sessions that were designed to bring people from New Mexico communities together to voice their concerns. Deputy Secretary Watchman-Moore informed the committee that NMED held four listening sessions throughout the state in 2004. They pointed out that the listening sessions were held in evenings to allow those who work during the day to attend them and that Spanish and Navajo translators were also present at the sessions. In 2005, a final report was issued with recommendations on the implementation of environmental justice, including enhancement of public notice and better coordination within state government to discuss environmental justice. Deputy Secretary Watchman-Moore stated that NMED was not ready to put environmental justice into statute, so the governor issued an executive order on environmental justice. She explained that the goal of the order is to provide for communication with the public in the development, implementation and enforcement of environmental laws, regulations and policies, regardless of race, color, ethnicity, religion, income or educational level.

Mary Day, the NMED's environmental justice and outreach issues liaison, added to Secretary Curry and Deputy Secretary Watchman-Moore's discussion of environmental justice. She explained that their work is to put together a process whereby the public can be heard. Ms. Day emphasized that the purpose of environmental justice is to make it feasible for the public to participate. She stated the challenge is to fit their outreach efforts with the characteristics of the state.

Questions and comments focused on:

- the standardization of environmental justice into regulations;
- the fairness of putting the burden on communities to come up with scientific data for environmental justice to be relevant; and
- whether environmental justice delays the permitting process.

Public Comment

Representative Heaton provided members of the public an opportunity to comment on issues discussed thus far by the committee.

Earl Montoya, a member of a community working group on contamination issues concerning Phelps Dodge, explained that there is a lack of communication between NMED and local citizens. He also noted that studies conducted regarding the effects of copper on humans indicate that copper dust, a by-product of copper refinement, could cause gastric problems in humans, particularly children, at contamination levels of one part per million. However, Mr. Montoya stated that the level of acceptable copper contamination in New Mexico was set at 3.1

parts per million, which is too high, and that copper contamination is still a problem in the Hurley community.

Carlos Provencio, a community organizer with the community working group, noted that it took 10 years for cleanup of area mines to begin. He also suggested that there is a need for more of the community to become involved in environmental issues.

Sally Smith, a member of the Gila resources information project, explained that she believes that the mining industry and companies such as Phelps Dodge exert tremendous influence over government and its decisions. She stated that representatives of Phelps Dodge had glossed over some of the pollution issues in their testimony. For instance, Ms. Smith indicated that the sulfuric acid that is produced by copper refinement is actually not entirely recycled, but instead contaminates some of the wells in the area.

Sewage and Treatment Disposal Systems and Implementation of Revised Rules for Septic Tanks: Local Concerns

Horace Jaramillo, public works director for Grant county, provided the committee with testimony regarding septic tank rules and their effect on local governments. He explained that his primary focus is to reach out to local colonias communities in Grant county to help assist with ground water pollution in those areas. Mr. Jaramillo went on to note that while there are a number of mandates coming from federal and state government, the duty to carry out the mandates often falls on local governments. He stated that the responsibility for rural infrastructure resides with local governments and that they need assistance in improving infrastructure to meet cleanup and disposal standards. Mr. Jaramillo emphasized that although there are wastewater treatment plants in the area, there is no place to dispose of the leftover sludge. He explained that the county simply does not have enough money to build such a facility for the sludge disposal. Mr. Jaramillo also noted that septic haulers are concerned with sludge disposal.

Debbie Rogers, a local realtor, explained to the committee that the changes in septic tank rules mean that septic systems must be inspected and brought up to compliance before a property's sale can be completed. She indicated that while the changes are likely well-intended, they could use some improvement. For example, Ms. Rogers stated that she had an offer of \$40,000 for a home, but the septic system would have required upgrades worth about \$8,000, which the prospective buyers could not afford. As a result, the home price had to be reduced to \$33,000, significantly less than the seller intended. Ms. Rogers also pointed out that many homes cannot be sold in northern New Mexico during winter months because the frozen ground makes inspections impossible. Finally, Ms. Rogers indicated that it is simply not practical for septic systems to be brought into compliance within 15 days of the inspection.

Rod Humphries, a local septic inspector and pumper, explained that he has problems disposing of septic and grease trap waste because of a lack of places to do so. He noted that while it has been suggested that waste could be transported to the nearby community of Playas, it

would simply cost transporters too much to transport the waste. Mr. Humphries emphasized that Grant county needs its own facility to be able to handle septic waste.

Ana Marie Ortiz, environmental health division director for NMED, provided the committee with a brief overview of problems associated with septage disposal. She explained that there are very few places around the state that will accept septage sludge. Some municipal wastewater treatment plants and several permitted disposal facilities are authorized to accept septage. She showed the committee the locations of the existing septic disposal facilities in New Mexico and discussed other methods of disposing of septic waste, such as soil incorporation and land application.

Ms. Ortiz went on to address the concerns of Mr. Jaramillo, Ms. Rogers and Mr. Humphries. She stated that NMED is working with stakeholders who wish to develop and permit new facilities, developing comprehensive septage regulations for pumping, hauling and disposal and that NMED is conducting public outreach and education. Furthermore, NMED requested public comment in May from everyone on its mailing list regarding certain areas of the new septic tank regulations. She noted that, in particular, the rule regarding bringing systems into compliance within 15 days would likely be changed.

Discussion concerned:

- legislation to empower counties to dispose of sludge that cannot go into the community systems.

Public Comment

Allyson Siwik, executive director of the Gila resources information project, provided the committee with testimony regarding the need to protect New Mexico's water resources. She stated that under current federal policies, which reduce federal Clean Water Act protection, unregulated dumping of pollutants can occur in closed basins and in some ephemeral and intermittent waters. These circumstances, Ms. Siwik pointed out, call for the state to take strong action to protect these waters. She stated that the wisdom of protecting all waters of New Mexico should be affirmed and the state should therefore reject proposals by the NMMA, the New Mexico oil and gas association and other industry representatives that would gut state protections and limit state jurisdiction.

Ms. Siwik emphasized that the state should ensure that the oil and gas and mining industries do not contaminate New Mexico's waters and are accountable to the people and the health of New Mexico's communities. She stated that the Pollutant Discharge Elimination Act is a step in the right direction, but that the Gila resources information project has some serious misgivings about some provisions in the proposed act. Ms. Siwik urged the committee to address its concerns in the next legislative session.

There being no further business, the committee adjourned at 5:05 p.m.

MINUTES
of the
LOS ALAMOS NATIONAL LABORATORY OVERSIGHT COMMITTEE
and the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE
August 9, 2006
Conference Room
Los Alamos Research Park

The joint meeting of the Los Alamos National Laboratory (LANL) Oversight Committee and the Radioactive and Hazardous Materials Committee was called to order at 9:12 a.m. on Wednesday, August 9, 2006, by Representative Roberto "Bobby" J. Gonzales, co-chair.

LANL Oversight Committee

Present

Rep. Roberto "Bobby" J. Gonzales, Co-Chair
Sen. Phil A. Griego, Co-Chair
Rep. Thomas A. Anderson
Sen. John T.L. Grubestic
Sen. Richard C. Martinez
Sen. William H. Payne
Rep. Jane E. Powdrell-Culbert
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Absent

Sen. William E. Sharer

Advisory Members

Rep. Ben Lujan
Rep. Jeannette O. Wallace

Sen. Ben D. Altamirano
Sen. Mary Jane M. Garcia
Sen. Stuart Ingle

Radioactive and Hazardous Materials Committee

Present

Sen. Phil A. Griego, Chair
Rep. John A. Heaton, Vice Chair
Rep. Donald E. Bratton
Sen. John T.L. Grubestic
Sen. Carroll H. Leavell
Sen. Richard C. Martinez
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

Absent

Sen. Vernon D. Asbill
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Rep. Antonio Lujan

Advisory Members

Rep. Thomas A. Anderson
Sen. William H. Payne
Rep. Nick L. Salazar

Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. John Pinto

Staff

Evan Blackstone
Gordon Meeks
Liz Holmes

Guests

The guest list is in the meeting file.

Copies of all the handouts and written testimony are in the meeting file.

Wednesday, August 9

Welcome

The committees began by introducing themselves and staff to the audience. Mike Wheeler, chair of the Los Alamos County Council, welcomed the committees.

Overview of the National Nuclear Security Administration's Environmental Impact Statement for LANL

Elizabeth Withers, National Environmental Policy Act compliance officer for the Department of Energy at LANL, told the committee that the first Los Alamos sitewide environmental impact statement (EIS) was issued in 1979, the second in 1999 and now the third is in progress. She said that in 2004, the lab concluded that there was a need for a supplemental statement, and the current EIS is in response to that conclusion. A draft document was issued on July 7 and a public comment period will close 75 days later, on September 20. There will be public hearings in Los Alamos, Espanola and Santa Fe during that period.

The lab has also conducted briefings for the affected pueblos and the congressional delegation. Examples of some of the public comments received on the EIS address the plutonium pit production alternatives and the construction of parking lots at either end of Pajarito Road. Pits are the trigger mechanisms for nuclear bombs and theoretically may lose their viability over time, thus compromising the stockpile of nuclear weapons. Therefore, these pits need to be replaced periodically. She said that all of the public comments will be published with the final EIS and the record of decision.

Questions and comments from the committees addressed:

- additional space required for increased pit production;
- the current number of certified pits and the effect on national security of low production levels;
- why the decision on pit production has been delayed;
- the status of legacy waste and its inclusion in the EIS;
- employment levels at LANL according to the alternatives in the EIS;
- the length of the public comment period; and
- the level of gross receipts taxes LANL is expected to be subject to and their impact on employment at the lab.

Environmental Program Overview

Andy Phelps, associate director for environmental programs at LANL, provided the committees with an overview of LANL's environmental programs. His presentation covered LANL's new organizational structure, its strategic intent, operational successes and sustainable solutions.

Mr. Phelps highlighted one aspect of LANL's new contract: it has brought new people into the lab from around the country and internationally. He stated that the lab's strategic intent includes ensuring public safety, accelerating cleanup and increasing transparency with the public. With regard to accelerating cleanup, Mr. Phelps summarized that LANL is meeting deadlines set by the federal consent order, working to remediate chromium contamination and working to get the public engaged in the cleanup process. He said that LANL is focused on becoming a model environmental steward for the community and the state. The lab strives for transparency, engaging in a mutually supportive relationship with the New Mexico Department of Environment (NMED), accepting and respecting the NMED's regulatory authority and seeking greater public input on LANL's high-level goals and objectives. Mr. Phelps emphasized that LANL is working with the NMED to improve the timeliness of communications with the public so that there is accountability for taxpayer investment in the facility. He went on to state that LANL is improving its effectiveness and efficiency by bringing in new expertise that has a history of performance and innovation.

Mr. Phelps also summarized for the committees the current issues being addressed by LANL that have impacts on its environmental programs. These include dealing with chromium contamination, meeting goals for transuranic (TRU) waste disposal, achieving stability in LANL's funding, conducting effective ground water monitoring and building public confidence. Mr. Phelps concluded his presentation by reviewing various goals for its environmental programs, including waste operations, water stewardship, TRU waste disposition, radioactive liquid waste and corrective actions.

Questions and comments from the committees addressed:

- the presence of the NMED at sites during physical cleanup and LANL's willingness for transparency;
- the cost to the state for remediation activities at LANL and the cost borne by the federal government;
- LANL's notification to local responders and communities through which TRU waste is transported;
- prioritization of sites for cleanup;
- the membership composition of the citizen's advisory board;
- the total cost of cleanup activities;
- the NMED budget and staffing adequacy and its working relationship with LANL;
- appreciation of LANL's work and employment of northern New Mexicans; and
- the amount of hazardous waste remaining at LANL.

Committee Business

Minutes of the previous meetings of both committees were approved without opposition.

Update on Consent Order Compliance

James Bearzi, Hazardous Waste Bureau chief for the NMED, began by briefly reviewing the federal consent order on environmental remediation and cleanup at LANL. He explained that the consent order covers the cleanup of certain types of hazardous waste, including contaminants such as metals and solvents but not radioactive waste. The purpose of the consent order is to prioritize contamination investigation activities, provide minimum investigation requirements and prescribe cleanup levels and schedules for work plan submittals, reporting and remedy completions.

Gordon Dover, LANL program director for corrective actions, provided the committees with an overview and status update of LANL's environmental remediation program. He explained that the program is aimed at ensuring compliance with the consent order and investigating and completing risk-based remediation of historically contaminated sites. Mr. Dover stated LANL is working closely with the federal Department of Energy (DOE) and the NMED to ensure that appropriate priorities and approaches are being addressed. He went on to describe the types of sites and contamination targeted for cleanup by the program. The sites include landfills, wastewater management systems and contamination resulting from past and present LANL operations. The types of contamination include chemical, heavy metals, radioactive constituents, high explosives and degradation products. After 2,124 potential release sites were identified in 1989, today 760 sites remain with work in progress. Mr. Dover informed the committees that he thinks most of those remaining sites will require little or no action. He said that probably 100 sites will require cleanup while 180 sites cannot be remediated until certain laboratory activities are shut down.

Dave McNroy, deputy program director for corrective actions, summarized LANL's progress in implementing the consent order. He stated that LANL has met all regulatory deliverables; two extension requests were made to the NMED as a result of unforeseen field conditions and one enforcement action was issued. Mr. McNroy emphasized that the NMED staffing levels need to be aligned with the workload required by the consent order and that LANL provided \$1.4 million in supplemental funding to the NMED to help remedy the problem. Mr. McNroy went on to review LANL's field activity and deliverable accomplishments for 2006. He also reviewed LANL's consent order implementation plan for 2007, which includes characterization activities at five material disposal areas and sediment contamination investigations in four major canyon systems.

Mr. Bearzi described some of the difficulties the NMED faces in meeting deadlines set by the consent order. He said that in a two-month period, the NMED received 66 documents from LANL that required a response from the NMED. Because some of the documents are voluminous and complicated and the NMED has five employees to review them, the NMED has reviewed and responded to only 31 of the documents. Mr. Bearzi went on to state that the NMED's budget expansion for additional employees approved in the last legislative session as well as working to prioritize data may help to alleviate the workload dilemma for the NMED.

Questions and comments from the committees addressed:

- the remediation of sites with high explosives;
- the effect of the state's regulations on effective cleanup and LANL's other responsibilities;
- how LANL deals with flash residue from certain sites;
- the potential dangers that the City of Santa Fe faces from contamination at the lab;
- whether delays at the NMED are causing delays in actual cleanup;
- ground water and surface water monitoring;
- the names of contractors that are doing actual cleanup;
- providing the committees with the performance reports that the NMED gives to the Legislative Finance Committee; and
- looking at contamination at other federal facilities in New Mexico in addition to LANL.

Ground Water Conceptual Model

Dr. Ardyth Simmons, program manager at LANL, described for the committees ground water modeling of the Pajarito Plateau. She explained the differences between the alluvial ground water, the vadose zone and the regional aquifer and the purpose of the modeling effort in relation to each. She went into technical detail regarding the development of the models using deep well drilling, taking hydrologic measurements and analyzing the data and interpreting the results.

She provided graphics that depict the relationship between sources of water, how contamination may flow through a water table, the lateral spreading of contamination, the kind of enhanced infiltration that occurs in certain geologic formations and the speed of water flow in different formations. Empirical data and the model show that ground water flows rapidly in alluvial deposits where some contaminants are rapidly flushed into the vadose zone but other contaminants are slower moving. She explained that contaminants move slowly from dry mesas and canyons, but that they move faster in wet canyons. In canyon bottoms, contaminants move through the formations in a few decades, but the movement takes thousands of years from dry mesa tops. She also gave general estimates of speeds of contaminant transport and infiltration rates through other geologic strata and conditions. Municipal wells have a measurable effect on water levels; hence, the need for continued ground water quality monitoring.

Questions and comments from the committees addressed:

- differences in contaminant levels as a function of elevation;
- recharge factors and speed of lateral transfers;
- the use of isotope tracers;
- colloidal effects;
- wells as pathways of contamination; and
- the influence of wells on ground water flow.

Chromium Interim Measures Plan

Daniel Katzman, program manager at LANL, testified that chromium contamination found in Los Alamos is from a power plant, which used chromium in its cooling water to inhibit corrosion of the plant's cooling towers. There are no impacts associated with the discovery of

the chromium, he said. This contamination is historic and no current operations are releasing chromium. Chromium use was terminated in the 1970s because records indicate operators recognized potential health impacts. Two hundred thousand to 300,000 pounds of chromium were released from Sandia Canyon Technical Area 3. The wetland created by lab operations is probably contaminated, he said, and White Rock Canyon Springs might show some chromium contamination in the future.

The lab is now actively monitoring for chromium and is prepared to take necessary action when and if a water well may be threatened by imminent chromium contamination. A new monitoring well will be installed near the PM 3 production well to detect any imminent threat. Different protocols are being explored for protection of the water quality from production wells. He told the committees that the NMED has approved LANL's work plan to deal with the situation. Drilling of the monitoring well will begin in a week, and a report will be issued in November.

Questions and comments from the committees addressed:

- the threshold for hazardous concentration of chromium;
- regulatory standards for chromium contamination;
- the history of power plant usage of chromium in cooling water;
- the location of the monitoring well; and
- toxic effects of chromium.

NMED Update on LANL Issues

Cindy Padilla, director of the NMED's Water and Waste Management Division, began by explaining the development of the NMED's relationship with LANL and the NMED's role as a regulator. She stated that she welcomes the new management at LANL and its efforts to strengthen the relationship with the NMED. Ms. Padilla then introduced the NMED staff that work on oversight at LANL and highlighted that the relationship is a good one. She also informed the committees that funding for oversight is a challenge every year.

James Bearzi, Hazardous Waste Bureau chief for the NMED, summarized for the committees the NMED's organizational structure and the oversight and regulatory duties of the NMED divisions and bureaus with regard to LANL. Mr. Bearzi reviewed NMED's roles, duties and activities for regulation of safe drinking water, air quality, federal DOE oversight, surface water quality, ground water quality and hazardous waste management. Senator Phil A. Griego, chair of the Radioactive and Hazardous Materials Committee, requested that Mr. Bearzi inform the committee of the specific issues that the legislature can address with regard to the relationship between the NMED and LANL. Mr. Bearzi stated that meeting the requirements of the consent order is difficult due to the complexity and scope of the order and the NMED's limited staff. However, the memorandum of agreement between the NMED and the DOE, he said, in addition to the legislature's approval in 2006 of additional employees for the NMED's Hazardous Waste Bureau will probably help to solve some problems. Mr. Bearzi pointed out that the legislature approved an expansion from five full-time employees to 10, but that the Hazardous Waste Bureau currently has seven employees. Two positions are being advertised and one employee is being transferred to the bureau.

Mr. Bearzi emphasized that it is difficult to make requests of the legislature for assistance for the NMED in 2007 because it remains to be seen how 10 full-time employees for the bureau may increase the NMED's ability to meet the consent order's requirements. He said that the passage of legislation in 2006 endorsed by the Radioactive and Hazardous Materials Committee that allows voluntary fee agreements is helpful, but the legislature needs to keep an eye on how effective the new full-time employees for the Hazardous Waste Bureau will be in the future.

Questions and comments from the committees addressed:

- funding for the NMED's general operations statewide; and
- the specific performance needs of the NMED relative to the compliance order.

Status of Waste Isolation Pilot Plant (WIPP) Shipments

Gerald O'Leary, program director for transuranic waste TRU disposition, informed the committees that LANL's mission for its TRU Waste Disposition Project is to accelerate the retrieval, characterization and shipment of approximately 50,000 drum equivalents of TRU waste from LANL to WIPP by 2010. He explained LANL's TRU waste operations for Technical Area 54 or "Area G", which has been used for disposal of radioactive waste since 1957. Mr. O'Leary also described the TRU waste simplified process flow in which LANL prescreens the TRU waste in order to characterize it before shipping the waste to WIPP.

The current 2006 shipping status for the TRU waste disposition project, Mr. O'Leary stated, is 91 shipments totaling 2,046 containers. He went on to say that the project faces a number of challenges in the future, including an aggressive completion schedule, dealing with aging facilities that do not meet certain safety standards and other resource and technical challenges. Mr. O'Leary concluded by highlighting that the biggest challenge is the sequencing of retrieval, characterization and shipping and environmental restoration activities.

Questions and comments from the committees addressed:

- the recharacterization of LANL TRU waste.

Technical Area 21 Remediation Plan and Schedule Waste Disposal Scenarios

Allan Chaloupka, program director for Technical Area 21 closure, and William Criswell, deputy program director, explained to the committees that LANL's mission regarding Technical Area 21 is to complete the consent order by remediation and corrective actions in a safe and compliant manner, including demolition. They said that Technical Area 21 was one of the original plutonium processing facilities at the laboratory, built shortly after World War II.

The status of the buildings at this location is: the Delta Prime-West buildings have been deactivated and have little current risk; the Delta Prime-East buildings are now completing their mission; and material disposal areas (MDAs) are in various stages of corrective action, material removal or abandonment. The largest volume of waste is assumed to be low-level radioactive waste, according to Mr. Chaloupka and Mr. Criswell. This waste will be disposed of on both on-site and off-site waste facilities. Hazardous and mixed wastes will be shipped to permitted off-site facilities in Utah, Texas and Nevada, and remaining industrial wastes will be disposed of at licensed in-state facilities. Technical Area 21 is expected to be closed and cleanup completed by 2011.

Questions and comments from the committees addressed:

- the status of contamination cleanup in the canyons of Los Alamos; and
- when cleanup planning started (10 years ago), at which time funding constraints delayed the full cleanup schedule.

The committee adjourned at 4:50 p.m.

**MINUTES
of the
FOURTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**September 19, 2006
Pecos River Village Conference Center
Carlsbad**

**September 20, 2006
New Mexico Junior College
Hobbs**

The fourth meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:05 a.m. on Tuesday, September 19, 2006, by Representative John A. Heaton, vice chair.

Present

Rep. John A. Heaton, Vice Chair
Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Sen. Richard C. Martinez
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

Advisory Members

Sen. Mary Jane M. Garcia
Rep. Nick L. Salazar
Rep. Mary H. Skeen

Staff

Evan Blackstone
Jeret Fleetwood

Guests

Rep. Donald L. Whitaker (September 20)

Absent

Sen. Phil A. Griego, Chair
Sen. John T.L. Grubescic

Rep. Thomas A. Anderson
Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto

The guest list is in the original meeting file.

Tuesday, September 19 — Pecos River Village Conference Center, Carlsbad

The committee began by introducing members and staff to the audience. Representative Heaton welcomed to the committee Representative Mary Skeen, who was recently appointed to serve in the legislature.

Bob Forrest, mayor of Carlsbad, welcomed the committee to Carlsbad and discussed continuing efforts at economic development in southeastern New Mexico. He explained that the Waste Isolation Pilot Project (WIPP) plays a large role in maintaining Carlsbad's low unemployment rate and relatively high median income. Mr. Forrest also noted that the potash mining industry and the planned National Enrichment Facility (NEF) outside of Hobbs also contribute significantly to Carlsbad's economy. Finally, Mr. Forrest pointed out that several projects in Carlsbad were made possible through legislative funding and he thanked the members of the committee for their support.

WIPP: Status, Permits, Updates

Dr. David Moody, project manager for WIPP, began by thanking the legislature and the Carlsbad community for their support of WIPP in its nearly seven and a half years of operation. He informed the committee that the Environmental Protection Agency (EPA) recertified WIPP in March 2006 and that WIPP received its five thousandth shipment on September 10, 2006. He went on to explain the disposal status of transuranic (TRU) waste at the facility and the progress of legacy TRU waste cleanup at sites across the nation.

Dr. Moody also explained that WIPP recently was authorized to accept remote-handled TRU waste and is preparing to receive shipments of the waste. He provided the committee with an overview of the major differences between remote-handled and contact-handled waste, the amount of remote-handled waste that WIPP is equipped to receive, the method the federal Department of Energy (DOE) will use to ship the waste and the steps that the facility must take in order to begin receiving the remote-handled waste. He noted that WIPP was originally designed for the safe handling and disposal of remote-handled waste and additional facilities to store the waste do not have to be built.

James Bearzi, chief of the New Mexico Department of Environment's (NMED) Hazardous Waste Bureau, explained the proposed changes to WIPP's permit to receive remote-handled waste and the current status of the permit. Mr. Bearzi stated that the proposed changes include a new waste analysis plan, increased container storage areas and increased capacity for the disposal of waste. The draft permit was issued in late 2005 and the public hearing period on that draft ended in early June 2006. Mr. Bearzi said the next steps for completion of the permitting process involve submission of the public hearing officer's report, public comment on the hearing officer's report, a final decision by the secretary of environment, permit issuance and an audit of remote-handled waste characterization. Mr. Bearzi emphasized that NMED's relationship with WIPP has never been better. Representative Heaton complemented NMED and highlighted the success of the permit modification process.

Questions and comments included:

- the estimated date of the first remote-handled waste shipments to WIPP;
- public meetings addressing urban myths regarding radioactive waste;
- waste characterization issues at Los Alamos National Laboratory;
- the maximum number of shipments per week that WIPP can accommodate;
- storage methods for remote-handled and contact-handled waste;
- the shipping method for remote-handled waste;
- sources of remote-handled waste; and
- waste transport and storage safety and security concerns.

Hazardous Waste Act Amendments

Mr. Bearzi provided the committee with proposed amendments to the Hazardous Waste Act regarding criminal penalties for used oil violations. He explained that currently, used oil, such as that generated by automotive service businesses, oil transporters and processors, is regulated by both NMED and the EPA. Mr. Bearzi went on to note that there is a relaxed regulatory burden on used oil. For example, there are: no recordkeeping by generators, no storage amount or time limits on generators and no fees. However, the relaxed regulatory burden also encourages recycling and reuse of used oil. He stated that amending New Mexico's statutes to provide criminal penalties for used oil violations is necessary for NMED to receive EPA certification for the program and eliminate the current problem of double regulation. Lastly, Mr. Bearzi explained that the criminal penalties would be enforced by the attorney general and will not apply to inadvertent spills that are promptly cleaned up. The committee directed staff to provide members with drafts of the proposed legislation prior to the committee's final meeting.

Questions and comments included:

- fines for inadvertent oil spills;
- caps for fines;
- whether other types of oil, such as vegetable oil, would be covered by statutory changes; and
- whether the proposed changes will be in a bill for the 2007 session.

Federal Delegation: Introduction of Statute on National Pollutant Discharge Elimination System (NPDES) Primacy

Cindy Padilla, director of the Water and Wastewater Management Division of NMED, and Marcie Leavitt, chief of NMED's Surface Water Quality Bureau, provided the committee with an update regarding the status of NMED's pursuit of legislation authorizing the department to take over NPDES permitting authority from the EPA. Ms. Padilla explained that NMED would not be pursuing primacy during the 2007 legislative session. She and Ms. Leavitt provided the committee with an overview of the NPDES system and steps NMED has taken to involve various stakeholders in developing language for a bill to allow NMED to assume primacy.

Questions and comments included:

- reasons for NMED's decision not to pursue NPDES primacy in 2007; and
- the definition of "waters of the United States".

Mine Safety: Update on Implementation of HB 687 (2006) and Proposed Interagency Mine Emergency Response Plan

Rebecca Boam, state mine inspector, provided the committee with a brief overview of the powers and duties of the state mine inspector and a brief history of the development of mine safety standards. Specifically, Ms. Boam focused on HB 687, passed in 2006, which addresses a range of mine safety issues. She explained that one component of the legislation mandates the development of a mine emergency response plan. Ms. Boam went on to note that there are currently five underground mining operations in New Mexico and that each has submitted an emergency notification and implementation plan to the mine inspector's office. She also pointed out that some safety and communications equipment is required by the bill, and that those mines that have not purchased the equipment have had to submit implementation plans detailing their plans to do so.

Ms. Boam went on to indicate that one of the major issues regarding the implementation of mine safety requirements is the use of self-contained self-rescuers (SCSR). She explained that the size and weight of the SCSR units required by the legislation have become a contentious issue for miners. She noted that the current units are much smaller and lighter than the units required by the bill. Also, no other states have gone to the oxygen tank standards that New Mexico now has.

Ms. Boam also discussed the procedures put in place by the bill for notices of violations, appeals and fines. She pointed out that mining operations will work with the federal government on fine appeals and that the federal government can overturn decisions made by the state. Finally, Ms. Boam noted that no funding for the enforcement of mine safety plans was included in the legislation mandating mine safety standards. She stated that her office submitted a new budget request in July but it has not yet been heard.

Questions and comments included:

- the number of mine inspectors in New Mexico;
- on-site mine inspections;
- summarized benefits of the new legislation;
- the federal government as primary mine inspector; and
- protection for whistleblowers.

Potash Mining Industry Concerns

David Waugh, a representative of Mosaic Potash, Inc., provided the committee with additional information on the Mining Safety Act. He informed the committee that all the mining operations in New Mexico supported the Mining Safety Act legislation last session. Mr. Waugh pointed out that although the mining industry has made an overall investment of \$4 million toward mine safety, the state mine inspector is substantially underfunded to handle the new requirements of the act. He also explained the New Mexico Mining Association's (NMMA) position regarding the new requirement that miners wear SCSR units in underground mines. He explained that certain mines require a particular type of SCSR unit. For example, Mr. Waugh pointed out that the use of explosives in underground coal mines depletes a mine of oxygen, making units that simply filter harmful particles out of the air useless. He went on to

demonstrate how much larger and heavier the newly required SCSR units are compared to the previous units, the filter self-rescuers (FSR). He suggested that the mine safety requirements be amended to allow miners to continue to wear FSR units on their belts while keeping a cache of SCSR units available nearby.

Mr. Waugh went on to emphasize the importance of communications systems in mines, pointing out that such systems are typically the first thing to fail in a mine emergency. However, he noted that recent incidents at underground mines have led a number of states to enact similar mine safety requirements and have created a nationwide shortage on mine safety equipment and communications systems.

Questions and comments included:

- fire models to determine oxygen depletion and ventilation in coal mines;
- the level of carbon monoxide concentration the units are able to handle; and
- the distance of the mining work area to the rescuer unit caches.

Public Comment

John Horton, a lobbyist for Associated General Contractors, noted his concerns about the NPDES program. He explained that some concern exists within his industry that the laws granting NMED primacy over the NPDES program could be used to delay some construction projects. Mr. Horton also noted that permit fees and extra time for inspections need to be built into project costs, so discussions regarding NPDES legislation should involve those factors at some point.

Wednesday, September 20 — New Mexico Junior College, Hobbs

Representative Heaton began by providing the audience with a brief overview of the committee's history and charge. Members of the committee also introduced themselves.

Robert Rhodes, vice president of New Mexico Junior College, welcomed the committee to the college and to Hobbs.

Harry Teague, chair of the Board of County Commissioners in Lea County, also welcomed the committee to Hobbs. He thanked the committee for coming to southeastern New Mexico, and noted that construction of the NEF by Louisiana Energy Services (LES) has provided exciting economic development in the community.

On a motion made, seconded and unanimously approved, the minutes of the August 9, 2006 meeting were approved as submitted.

NEF Status: Report from LES

Marshall Cohen, vice president of communications and government relations for LES, updated the committee on the progress of construction of the NEF in Eunice. Mr. Cohen began by providing a general overview of the NEF. He informed the committee that it is a \$1.5 billion investment that will provide five percent of all electricity in the United States. Mr. Cohen went on to state that LES received a combined construction and operating license from the Nuclear Regulatory Commission on June 23, 2006.

Mr. Cohen next provided the committee with an overview of how uranium is actually enriched, how enriched uranium fits into the process of producing nuclear energy and the planned capacity of the NEF to produce enriched uranium. He explained in detail the use of gas centrifuge technology. Mr. Cohen also outlined the time line for construction of the NEF, noting that construction has already begun on the facility and should be completed by 2013. Mr. Cohen pointed out that LES is placing an emphasis on local contractors for much of the plant's construction.

Mr. Cohen also discussed the economic impact that both construction and operation of the NEF should have on Lea County and southeastern New Mexico. LES estimates it will spend between \$265 million and \$462 million on goods and services in the local economy through construction. Additionally, approximately \$9.6 million worth of goods and services would be purchased by LES annually. The NEF operations will employ 300 full-time employees and the company is working with New Mexico Junior College to develop future educational and training opportunities for students interested in employment at the NEF.

Mr. Cohen briefly discussed the settlement agreement reached by LES and the governor, NMED and the attorney general, which places limits on the storage of depleted materials, increases financial assurance for depleted materials outside of storage limits and allows for additional state inspections.

Mr. Cohen concluded by thanking the New Mexico Legislature, the governor, New Mexico's congressional delegation and the local community for their support and hard work on the project.

Questions and comments included:

- the construction time line;
- competition with the United States nuclear energy industry for good employees;
- the final destination for enriched uranium;
- uranium waste depositories in the United States;
- the storage of depleted uranium cylinders at NEF;
- the transition from a temporary building at NEF to a permanent facility;
- the use of the current, temporary NEF building as an assisted living facility;
- the training of NEF employees in European facilities;
- the lack of a deconversion facility for uranium in New Mexico;
- the source of uranium to be enriched;
- taxable income for New Mexico from NEF; and

- potential uses for enriched uranium.

Sonia Phillips of Excel Energy provided the committee with an update regarding plans to build a new power plant to address energy issues in southeastern New Mexico. She explained that the plant, which is the result of a partnership between Excel Energy and Lea County Power Partners, will be dry cooled, which uses roughly 10 percent of the water that water-cooled plants use. Ms. Phillips also indicated that the planned plant will produce about 550 megawatts of electricity.

Questions and comments included:

- how one megawatt provides enough power for about 1,000 homes; and
- the lack of power transmission capacity in southeastern New Mexico.

NEF Permits Update

Ron Curry, secretary of environment, provided the committee with an update regarding permits for the NEF. He began by explaining the importance of the Rocky Mountain Low-Level Waste Compact, which regulates the flow of low-level waste in and out of compact states. Secretary Curry informed the committee that the NEF cylinders fall under the jurisdiction of the compact and that NMED has been in good discussions with LES. He emphasized that compacts are the only instrument that can prohibit interstate commerce with regard to low-level waste and shipment into a compact state must be approved by that state. He pointed out that NMED has asked LES to start talking to the compact states and that LES has been very cooperative in responding to the department's request.

Next, Secretary Curry outlined the major permits that have been issued for the facility, including the site storm water, effluent pond and storm water retention basin permits. He went on to note that the groundbreaking of the NEF was the result of good, healthy, honest negotiation. Although NMED has worked very closely with LES on the facility, Secretary Curry stated that NMED does not partner with an industry. Rather, NMED's role is a regulatory one.

Secretary Curry went on to explain that a request had been made to NMED from residents of Lea County and some in neighboring Texas asking to deny permits to LES. He noted that a public meeting, not a hearing, had been scheduled for October 5, 2006 in Eunice. Secretary Curry indicated that a hearing may still be held after the public meeting.

Finally, Secretary Curry noted that the NEF enjoys a fair amount of local support and acknowledged the importance of the facility to southeastern New Mexico.

Questions and comments included:

- interstate compacts regulating the shipment of some radioactive waste across state lines; and
- whether the compacts require the agreement of all member states or simply between the involved states to ship waste.

Waste Control Specialists

Dean Kunihiro, senior vice president for licensing and regulatory affairs, provided the committee with an update on the licensing actions of Waste Control Specialists (WCS), a radioactive waste disposal operation in Texas near the New Mexico border. Mr. Kunihiro explained that the WCS facility has two license applications pending, including one for the disposal of low-level radioactive waste. He went on to note that the licensing procedure involves three rounds of technical review and comments. Mr. Kunihiro also pointed out that the facility already has a number of waste canisters on-site, and that the company is simply awaiting license approval to move the canisters to a permanent location. He stated that WCS remains optimistic that the process will move forward successfully.

Finally, Mr. Kunihiro emphasized that as WCS works to conclude its permitting process it has received a large amount of community support, both in Texas and in Lea County. He also indicated that he expects approval of the company's license to come sometime in 2007.

Questions and comments included:

- how Texas is the sole authority to issue permits for the facility;
- Texas membership in waste disposal compacts;
- the safety of containers in their temporary location outside of the WCS permanent facility;
- the involvement of other states in the compact that allows transport of waste to the facility; and
- movement of waste by rail to the facility.

Representative Heaton ended the meeting by thanking all members for attending and the presenters for their time. He went on to note the increasing importance of reprocessing nuclear fuel. Representative Heaton explained that Congress had recently appropriated money to develop a list of potential sites for a reprocessing facility, and that a partnership among Lea County, Eddy County, the City of Hobbs, the City of Carlsbad and a number of private interests had been formed to move forward with a proposal to locate such a facility in southeastern New Mexico.

There being no further business, the committee adjourned at 12:00 noon.

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MINUTES

**of the
FIFTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**December 1, 2006
Room 317, State Capitol
Santa Fe**

The fifth meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:05 a.m. on Tuesday, September 19, 2006, by Senator Richard C. Martinez.

PRESENT

Sen. Phil A. Griego, Chair
Rep. John A. Heaton, Vice Chair
Sen. John T.L. Grubestic
Rep. Manuel G. Herrera
Sen. Carroll H. Leavell
Sen. Richard C. Martinez
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

ABSENT

Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Sen. Gay G. Kernan
Rep. Antonio Lujan

Advisory Members

Rep. Thomas A. Anderson
Sen. Mary Jane M. Garcia
Rep. Nick L. Salazar

Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto
Rep. Mary H. Skeen

Staff

Evan Blackstone
Sarah Salazar

Guests

The guest list is in the original meeting file.

Tuesday, December 1

Committee Business

The committee began with members introducing themselves and staff to the audience.

Department of Environment Budget Overview

Jim Perry, director of the Department of Environment's (NMED) Administrative Services Division, provided the committee with an overview of NMED's budget request for fiscal year 2008. He began by outlining NMED's fiscal accountability, pointing out that NMED has received a clean audit for the third consecutive year and that the department has sound budget and cash management practices. Under the present administration, NMED has not required any deficit appropriations and has maintained a budget that reflects the department's available and

recurring special fund balances. Mr. Perry also stated that the department has maintained its transparency by providing information to all parties on its federal grant process.

Mr. Perry went on to review NMED's base budget and expansions for the entire agency and its programs and operations related to water quality, environmental health and the environmental protection. He also explained NMED's base budget and expansions for special revenue sources, including air quality permit fees and solid waste permit fees. Finally, Mr. Perry summarized for the committee the revenues, expenditures and fund balance for NMED's corrective action fund.

Questions and comments included the following subjects:

- the sources of special revenue funds;
- funding sources for the corrective action fund; and
- NMED's request for money from the general fund.

On a motion made, seconded and unanimously adopted, the minutes of the September 19-20 meeting were approved as submitted.

Department of Environment Legislative Proposals

Cindy Padilla, director of NMED's Water and Waste Management Division, began by informing the committee of a few proposals the legislature can expect from NMED in the upcoming 2007 session. The proposals include amendments to the Wastewater Facility Construction Loan Fund and the Rural Infrastructure Act.

Jim Norton, director of NMED's Environmental Protection Division, presented to the committee the final recommendations of the Governor's New Mexico Climate Change Advisory Group (CCAG). In 2005, the governor established the CCAG by executive order and directed the group to prepare a report that includes a projection of New Mexico's future greenhouse gas emissions and policy recommendations for reducing New Mexico's total greenhouse gas emissions to 2000 levels by the year 2012. The CCAG offers 69 policy recommendations to the governor, including recommendations on energy efficiency and the use of renewable energies. Mr. Norton informed the committee that the recommendations will be implemented through administrative processes rather than legislation.

Auralie Ashley-Marx, chief of NMED's Solid Waste Bureau, presented two legislative proposals to the committee. First, Ms. Ashley-Marx explained a proposal that establishes a fund for programs, services and activities for recycling, diversion and household hazardous waste and electronic waste collection. She informed the committee that these programs are expensive for local communities. The legislation would allow NMED to award grants from the fund to communities to assist with programs and initiate new ones that encourage recycling and expand the number of items that can be recycled.

The second piece of legislation presented by Ms. Ashley-Marx was a \$10,000,000 appropriation to recharge the Solid Waste Facility Grant Fund. She emphasized the importance of the funds to local communities and explained that NMED has been unable to fund over

\$9,000,000 in grant requests by communities since 2002. According to Ms. Ashley-Marx, money has not been placed in the fund since 1996. She presented a survey that indicated many communities would apply for grant funds if they were available for certain projects such as landfill closures.

The committee received public comment on the legislation. Speaking in favor of the Solid Waste Facility Grant Fund legislative proposal was Regina Romero, a representative from the New Mexico Municipal League; Joe Steel, De Baca County commissioner; Sam Boyd, a landfill operator in De Baca County; and Mark Turnbough, who has experience in solid waste facility permitting. Cindy Padilla requested that the committee not consider for endorsement the two pieces of legislation.

Finally, James Bearzi, chief of NMED's Hazardous Waste Bureau, presented to the committee proposed amendments to the Hazardous Waste Act. Mr. Bearzi explained that he first presented the concept to the committee at its September meeting and that the current proposal makes a few additional amendments. The legislation provides criminal penalties for used oil violations and corrects an inconsistency in the civil penalty amount for certain violations of the act. Mr. Bearzi emphasized that amending the act to provide certain criminal penalties is necessary for NMED to receive program authorization from the Environmental Protection Agency (EPA). He stated that currently, used oil such as that generated by automotive service businesses, oil transporters and processors is regulated by both NMED and the EPA.

After addressing questions from committee members regarding the legislation, Mr. Bearzi agreed to review and possibly revise some of the legislation's language for clarification. The committee did not consider the bill for endorsement.

Questions and comments included the following subjects:

- concerns regarding the implementation of CCAG recommendations by rule rather than through the legislature;
- funding for CCAG recommendations;
- mandatory and voluntary rules for industry in the CCAG recommendations;
- lack of emphasis for nuclear power in CCAG recommendations;
- distribution to rural areas of recycling, diversion, electronic waste and household hazardous waste collection fund;
- use of recycled tires for New Mexico's highways;
- availability of federal funds for solid waste management;
- position of counties and cities on solid waste management;
- use of used oil in heating by trucking companies;
- definition of used oil and when used oil becomes hazardous; and
- criminal penalties mandated by the EPA.

Discussion on NMED's Revised Rules for Septic Tanks

Representative Jim Trujillo raised concerns regarding NMED's revised rules for septic tanks and the implementation of those rules. He stated that the rules are inhibiting the ability of

people to sell their lots because it is expensive to conform to NMED's rules. According to the rules, septic tanks on lots of a certain size must be certified before the land can be sold. If the septic tank cannot be certified, then a new one that is compliant with NMED rules must be installed.

The committee received public comment from residents on both sides of the issue. Paula Barron, a resident of Santa Fe, expressed her support for the rules as a necessity to prevent groundwater contamination. She stated that the wells she drilled on her land are contaminated from septic tanks and the water is not treatable. She urged the committee to examine the role of septic tanks in New Mexico's overall water policy. The committee also received testimony from Paul and Susan Johnson, homeowners in Nambe, and Andres Trujillo, an experienced septic tank system installer. The Johnsons expressed their frustration for the NMED rules, stating that they have unfairly been required to install a \$20,000 septic tank system even though their current septic tank works extremely well. They emphasized that when they bought their home, there were no inspection requirements, and they are now being held accountable for a problem they did not create. The Santa Fe County attorney, Stephen Ross, informed the committee that the county is receiving numerous complaints on this issue and raised the possibility of an amnesty program.

Ana Marie Ortiz, director of the NMED's Environmental Health Division, explained to the committee that NMED is working to improve the program and trying to work with New Mexico citizens adversely affected by the rules. She described the effect of lot size on ground water pollution from septic systems. Ms. Ortiz went on to point out that the rules provide amnesty for existing septic systems that were installed on small lots, provided that they complied with lot size requirements at the time of initial installation.

Questions and comments included the following subjects:

- whether disclosure of the condition of septic tank systems be required to buyers;
- requests from some members that NMED work with the Johnsons, review the rules and bring recommendations back to the legislature; and
- costs of alternative septic tank systems.

National Pollution Discharge Elimination System (NPDES) Primacy: River Conservation Interests

Rachel Conn, policy analyst for Amigos Bravos, and Erik Schlenker-Goodrich, an attorney with the Western Environmental Law Center, provided a presentation on NPDES primacy from the perspective of river conservation. Ms. Conn explained that Amigos Bravos has been participating in the state advisory panel on NPDES primacy and the organization's main interest in state primacy is to ensure that all waters of the state are protected from unregulated dumping and pollution. In order to ensure that protection, Ms. Conn stated, Amigos Bravos recommends that New Mexico establish a state permit program to protect waters at serious risk of losing federal Clean Water Act protection. Additionally, Amigos Bravos urges the legislature to oppose any attempt to weaken New Mexico's right to set New Mexico-specific standards and protections. This includes supporting the Water Quality Control Commission's existing

definition of surface waters and opposing certain limits on New Mexico's right to protect water resources.

Questions and comments included the following subjects:

- the definition of surface waters;
- whether Amigos Bravos has met with NMED and other stakeholders in the NPDES primacy issue;
- specific work of Amigos Bravos and the involvement of acequias; and
- funding sources for Amigos Bravos.

New Mexico Office of Natural Resources Trustee

Martin Heinrich, the New Mexico natural resources trustee, summarized the mission of the New Mexico Office of Natural Resources Trustee (ONRT) and presented legislation the office is supporting in the upcoming 2007 session. He explained that ONRT's mission is to assess injury to natural resources caused by release of hazardous substances or oil and to seek compensation from the responsible parties for the restoration of those injured resources. Mr. Heinrich described the process by which compensation is provided, which begins with the identification of a release of a hazardous substance or oil and is followed by an assessment of the nature and extent of injury to natural resources. The next step is to determine fair compensation for the injury or loss of the resources and the services provided by those resources from the time the injury occurred to their full recovery. Compensation is either in the form of appropriate restoration projects or cash settlements. Mr. Heinrich informed the committee that ONRT uses a cooperative assessment approach that results in more restoration and less litigation.

Mr. Heinrich explained the legislation that amends the Natural Resources Trustee Act to provide for management and use of money in the Natural Resources Trustee Fund. Since 2004, the office has received no new funds for case startups, and the legislation would provide a sustainable funding stream to finance new cases. The amendments would allow the funds that responsible parties pay to reimburse ONRT costs to be used to pay for new case startups. The committee did not consider the legislation for endorsement.

Questions and comments included the following subjects:

- where money currently goes when responsible parties pay costs;
- ONRT's operating budget;
- whether ONRT funds are earmarked for a specific project or if the trustee can determine where money is spent;
- concern that money not earmarked for a specific purpose leads to increased funding requests and less oversight by the legislature;
- ownership of resources when restoration is complete; and
- constitutional concerns with the legislation.

Update on the Uranium Mining Industry in New Mexico

Jon Indall, an attorney with Comeau, Maldegen, Templeman and Indall, LLP, and Juan Velasquez, vice president of environmental and regulatory affairs for Strathmore Minerals Corporation, updated the committee on the uranium industry in New Mexico. Mr. Indall began by explaining to the committee that the price of uranium has risen because of the growing popularity of nuclear power. No nuclear power plants have been built in the United States since the 1970s, but currently 20 new units are slated to be running by 2020. Mr. Indall explained that America is projected to need 50 percent more electricity by 2025 than it currently uses. According to Mr. Indall, this need, combined with the need for domestic production to reduce America's dependence on oil, has led to a movement toward acceptance of nuclear energy. Mr. Indall went on to review the cumulative world demand for and supply of uranium.

Juan Velasquez stated that the New Mexico uranium industry is currently experiencing a renaissance with numerous companies postured to begin uranium mining activities. Mr. Velasquez summarized the areas of major uranium deposits in New Mexico, including the Grants region and the San Juan Basin. He also reviewed the various uranium mining companies active in New Mexico today, including Strathmore Resources, which has acquired land positions in the Gallup, Crownpoint and Grants areas. Mr. Velasquez informed the committee that Strathmore is currently performing baseline studies in support of projected in situ recovery (ISR) and conventional mining and milling at Church Rock and Roca Honda.

Mr. Velasquez went on to point out that uranium mining will bring employment and significant capital investment to New Mexico. He stated that the jobs have already begun in the form of environmental contractors and others involved in geologic investigations and drilling work. A reasonable estimate of initial future new uranium activity in New Mexico, Mr. Velasquez concluded, would be for 1,400 direct employees, a payroll of approximately \$90 million and an initial capital investment of around \$630 million.

Questions and comments included the following subjects:

- the impacts of uranium mining on the uranium enrichment facility;
- uranium mining activities on or near Indian land;
- remediation of uranium mining activities near Indian land;
- barriers to reinitiating the uranium industry in New Mexico; and
- staffing resources and jurisdiction of NMED and the Energy, Minerals and Natural Resources Department to oversee uranium mining.

Administrative Procedures Reform

T.J. Trujillo, lobbyist for a regulatory reform effort entitled "regulatory justice", introduced himself to the committee and stated he was appearing on behalf of the Association of Commerce and Industry (ACI). Mr. Trujillo informed the committee that regulatory justice is a call for consistency and accountability in New Mexico's regulatory framework. The concept is based on the principle that government should create a regulatory system that is simple and clear, enhances confidence, promotes accountability and ensures consistency in administrative proceedings.

Mr. Trujillo explained that in the spring of 2006, various businesses, industry groups, trade associations and other interested parties began meeting in an informal network with the

goal of developing proactive solutions to some of the common regulatory obstacles facing the business community. Since then, a variety of groups have signed on to the regulatory justice effort, including the New Mexico Cattle Growers' Association, Dairy Farmers of America and the New Mexico Mining Association. The role of ACI in this effort, Mr. Trujillo pointed out, is to coordinate with the groups to spread the word about regulatory justice, acquire and provide legal and technical expertise and advocate for any legislation for the 2007 legislative session.

Mr. Trujillo went on to update the committee on the current status of the regulatory justice effort. He stated that conceptual draft pieces of legislation have been developed and that ACI has spoken to industry groups, environmental groups, the governor's office and six interim legislative committees regarding the legislation. He said ACI plans to prepare final drafts of the legislation before the legislative session. The primary legislative concepts include applying the Administrative Procedures Act uniformly to all executive agencies, implementing a negotiated rulemaking process and establishing a central panel of administrative law judges and hearing officers.

Questions and comments included the following subjects:

- concerns about rulemaking by executive agencies that violates separation of powers principles;
- legislative approval of agency rules; and
- whether representatives of the regulatory justice effort have met with NMED.

Consideration of Legislation

The committee considered and endorsed the Uniform Environmental Covenants Act for the 2007 session.

There being no further business, the committee adjourned at 4:35 p.m.

Legislative Proposals

HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO REAL PROPERTY; ENACTING THE UNIFORM ENVIRONMENTAL
COVENANTS ACT; PROVIDING FOR COVENANTS RESTRICTING USE OF REAL
PROPERTY SUBJECT TO ENVIRONMENTAL REMEDIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Uniform Environmental Covenants Act".

Section 2. DEFINITIONS.--As used in the Uniform
Environmental Covenants Act:

A. "activity and use limitations" means
restrictions or obligations created pursuant to the Uniform
Environmental Covenants Act with respect to real property;

B. "agency" means the department of environment or
any other state or federal agency that determines or approves
the environmental response project pursuant to which the

1 environmental covenant is created;

2 C. "common interest community" means a condominium,
3 cooperative or other real property with respect to which a
4 person, by virtue of the person's ownership of a parcel of real
5 property, is obligated to pay property taxes or insurance
6 premiums or for maintenance or improvement of other real
7 property described in a recorded environmental covenant that
8 creates the common interest community;

9 D. "environmental covenant" means a servitude
10 arising under an environmental response project that imposes
11 activity and use limitations;

12 E. "environmental response project" means a plan or
13 work performed for environmental remediation of real property
14 and conducted:

15 (1) under a federal or state program governing
16 environmental remediation of real property;

17 (2) incident to closure of a solid or
18 hazardous waste management unit, if the closure is conducted
19 with approval of an agency; or

20 (3) under a state voluntary cleanup program
21 authorized in the Voluntary Remediation Act;

22 F. "holder" means the grantee of an environmental
23 covenant as specified in Subsection A of Section 3 of the
24 Uniform Environmental Covenants Act;

25 G. "person" means an individual; corporation;

.163853.1

1 business trust; estate; trust; partnership; limited liability
2 company; association; joint venture; public corporation;
3 government; governmental subdivision, agency or
4 instrumentality; or any other legal or commercial entity;

5 H. "record", when used as a noun, means information
6 that is inscribed on a tangible medium or that is stored in an
7 electronic or other medium and is retrievable in perceivable
8 form; and

9 I. "state" means a state of the United States, the
10 District of Columbia, Puerto Rico, the United States Virgin
11 Islands or any territory or insular possession subject to the
12 jurisdiction of the United States.

13 Section 3. NATURE OF RIGHTS--SUBORDINATION OF
14 INTERESTS.--

15 A. Any person, including a person who owns an
16 interest in real property, an agency or a municipality or other
17 unit of local government, may be a holder. An environmental
18 covenant may identify more than one holder. The interest of a
19 holder is an interest in real property.

20 B. A right of an agency pursuant to the Uniform
21 Environmental Covenants Act or pursuant to an environmental
22 covenant, other than a right as a holder, is not an interest in
23 real property.

24 C. An agency is bound by any obligation it assumes
25 in an environmental covenant, but an agency does not assume

.163853.1

1 obligations merely by signing an environmental covenant. Any
2 other person who signs an environmental covenant is bound by
3 the obligations the person assumes in the environmental
4 covenant, but signing the environmental covenant does not
5 change obligations, rights or protections granted or imposed
6 under law other than the Uniform Environmental Covenants Act,
7 except as provided in the environmental covenant.

8 D. The following rules apply to interests in real
9 property in existence at the time an environmental covenant is
10 created or amended:

11 (1) an interest that has priority under other
12 law is not affected by an environmental covenant unless the
13 person that owns the interest subordinates that interest to the
14 environmental covenant;

15 (2) the Uniform Environmental Covenants Act
16 does not require a person who owns a prior interest to
17 subordinate that interest to an environmental covenant or to
18 agree to be bound by the environmental covenant;

19 (3) a subordination agreement may be contained
20 in an environmental covenant covering real property or in a
21 separate record. If the environmental covenant covers commonly
22 owned property in a common interest community, the record may
23 be signed by any person authorized by the governing board of
24 the owners' association; and

25 (4) an agreement by a person to subordinate a

1 prior interest to an environmental covenant affects the
2 priority of that person's interest but does not by itself
3 impose any affirmative obligation on the person with respect to
4 the environmental covenant.

5 Section 4. CONTENTS OF ENVIRONMENTAL COVENANT.--

6 A. An environmental covenant shall:

7 (1) state that the instrument is an
8 environmental covenant executed pursuant to the Uniform
9 Environmental Covenants Act;

10 (2) contain a legally sufficient description
11 of the real property subject to the environmental covenant;

12 (3) describe the activity and use limitations
13 on the real property;

14 (4) identify every holder;

15 (5) be signed by the agency, every holder and,
16 unless waived by the agency, every owner of the fee simple of
17 the real property subject to the environmental covenant; and

18 (6) identify the name and location of any
19 administrative record for the environmental response project
20 reflected in the environmental covenant.

21 B. In addition to the information required by
22 Subsection A of this section, an environmental covenant may
23 contain other information, restrictions and requirements agreed
24 to by the persons who signed it, including:

25 (1) requirements for notice following transfer

1 of a specified interest in, or concerning proposed changes in
2 use of, applications for building permits or proposals for any
3 site work affecting the contamination on the property subject
4 to the environmental covenant;

5 (2) requirements for periodic reporting that
6 describe compliance with the environmental covenant;

7 (3) rights of access to the property granted
8 in connection with implementation or enforcement of the
9 environmental covenant;

10 (4) a brief narrative description of the
11 contamination and remedy, including the contaminants of
12 concern, the pathways of exposure, limits on exposure and the
13 location and extent of the contamination;

14 (5) limitation on amendment or termination of
15 the environmental covenant in addition to those contained in
16 Sections 9 and 10 of the Uniform Environmental Covenants Act;
17 and

18 (6) rights of the holder in addition to the
19 holder's right to enforce the environmental covenant pursuant
20 to Section 11 of the Uniform Environmental Covenants Act.

21 C. In addition to other conditions for the agency's
22 approval of an environmental covenant, the agency may require
23 those persons specified by the agency who have interests in the
24 real property to sign the environmental covenant.

25 Section 5. VALIDITY--EFFECT ON OTHER INSTRUMENTS.--

.163853.1

1 A. An environmental covenant that complies with the
2 Uniform Environmental Covenants Act runs with the land.

3 B. An environmental covenant that is otherwise
4 effective is valid and enforceable even if:

5 (1) it is not appurtenant to an interest in
6 real property;

7 (2) it can be or has been assigned to a person
8 other than the original holder;

9 (3) it is not of a character that has been
10 recognized traditionally in common law;

11 (4) it imposes a negative burden;

12 (5) it imposes an affirmative obligation on a
13 person having an interest in the real property or on the
14 holder;

15 (6) the benefit or burden does not touch or
16 concern real property;

17 (7) there is no privity of estate or contract;

18 (8) the holder dies, ceases to exist, resigns
19 or is replaced; or

20 (9) the owner of an interest subject to the
21 environmental covenant and the holder are the same person.

22 C. An instrument that creates restrictions or
23 obligations with respect to real property that would qualify as
24 activity and use limitations, except for the fact that the
25 instrument was recorded before the effective date of the

1 Uniform Environmental Covenants Act, is not invalid or
2 unenforceable because of any of the limitations on enforcement
3 of interests described in Subsection B of this section or
4 because it was identified as an easement, servitude, deed
5 restriction or other interest. The Uniform Environmental
6 Covenants Act does not apply in any other respect to such an
7 instrument.

8 D. The Uniform Environmental Covenants Act does not
9 invalidate or render unenforceable any interest, whether
10 designated as an environmental covenant or other interest, that
11 is otherwise enforceable under the law of New Mexico.

12 Section 6. RELATIONSHIP TO OTHER LAW.--

13 A. The Uniform Environmental Covenants Act does not
14 authorize a use of real property that is otherwise prohibited
15 by zoning, by a law other than the Uniform Environmental
16 Covenants Act regulating use of real property or by a recorded
17 instrument that has priority over the environmental covenant.
18 An environmental covenant may prohibit or restrict a use of
19 real property that is authorized by zoning or by a law other
20 than the Uniform Environmental Covenants Act.

21 B. The Uniform Environmental Covenants Act
22 supplements and does not displace the Voluntary Remediation
23 Act, the New Mexico Mining Act, the Surface Mining Act, the Oil
24 and Gas Act, the Water Quality Act or any other law governing
25 an environmental response project.

1 Section 7. NOTICE.--

2 A. A copy of an environmental covenant shall be
3 provided by the following persons and in the manner required by
4 the agency to:

5 (1) each person who signed the environmental
6 covenant;

7 (2) each person holding a recorded interest in
8 the real property subject to the environmental covenant;

9 (3) each person in possession of the real
10 property subject to the environmental covenant;

11 (4) each municipality or other unit of local
12 government in which real property subject to the environmental
13 covenant is located; and

14 (5) any other person the agency requires.

15 B. The validity of an environmental covenant is not
16 affected by failure to provide a copy of the environmental
17 covenant as required under this section.

18 Section 8. RECORDING.--

19 A. An environmental covenant and any amendment or
20 termination of the environmental covenant shall be recorded in
21 every county in which any portion of the real property subject
22 to the environmental covenant is located. For purposes of
23 indexing, a holder shall be treated as a grantee.

24 B. Except as otherwise provided in Subsection C of
25 Section 9 of the Uniform Environmental Covenants Act, an

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1 environmental covenant is subject to the laws of New Mexico
2 governing recording and priority of interests in real property.

3 Section 9. DURATION--AMENDMENT BY COURT ACTION.--

4 A. An environmental covenant is perpetual unless it
5 is:

6 (1) by its terms, limited to a specific
7 duration or terminated by the occurrence of a specific event;

8 (2) terminated by consent pursuant to Section
9 10 of the Uniform Environmental Covenants Act;

10 (3) terminated pursuant to Subsection B of
11 this section;

12 (4) terminated by foreclosure of an interest
13 that has priority over the environmental covenant; or

14 (5) terminated or modified in an eminent
15 domain proceeding, but only if:

16 (a) the agency that signed the
17 environmental covenant is a party to the proceeding;

18 (b) all persons identified in
19 Subsections A and B of Section 10 of the Uniform Environmental
20 Covenants Act are given notice of the pendency of the
21 proceeding; and

22 (c) the court determines, after hearing,
23 that the termination or modification will not adversely affect
24 human health or the environment.

25 B. If the agency that signed an environmental

1 covenant has determined that the intended benefits of the
2 environmental covenant can no longer be realized, a court,
3 under the doctrine of changed circumstances, in an action in
4 which all persons identified in Subsections A and B of Section
5 10 of the Uniform Environmental Covenants Act have been given
6 notice, may terminate the environmental covenant or reduce its
7 burden on the real property subject to the environmental
8 covenant. The agency's determination or its failure to make a
9 determination upon request is subject to review pursuant to the
10 Administrative Procedures Act.

11 C. Except as otherwise provided in Subsections A
12 and B of this section, an environmental covenant may not be
13 extinguished, limited or impaired through issuance of a tax
14 deed, foreclosure of a tax lien or application of the doctrine
15 of adverse possession, prescription, abandonment, waiver, lack
16 of enforcement, acquiescence or a similar doctrine.

17 Section 10. AMENDMENT OR TERMINATION BY CONSENT.--

18 A. An environmental covenant may be amended or
19 terminated by consent only if the amendment or termination is
20 signed by:

- 21 (1) the agency;
- 22 (2) the current owner of the fee simple of the
23 real property subject to the environmental covenant, unless
24 waived by the agency;
- 25 (3) each person who originally signed the

1 environmental covenant, unless the person waived in a signed
2 record the right to consent or a court finds that the person no
3 longer exists or cannot be located or identified with the
4 exercise of reasonable diligence; and

5 (4) the holder, except as otherwise provided
6 in Paragraph (2) of Subsection D of this section.

7 B. If an interest in real property is subject to an
8 environmental covenant, the interest is not affected by an
9 amendment of the environmental covenant unless the current
10 owner of the interest consents to the amendment or has waived
11 in a signed record the right to consent to amendments.

12 C. Except for an assignment undertaken pursuant to
13 a governmental reorganization, assignment of an environmental
14 covenant to a new holder is an amendment.

15 D. Except as otherwise provided in an environmental
16 covenant:

17 (1) a holder may not assign interest without
18 consent of the other parties;

19 (2) a holder may be removed and replaced by
20 agreement of the other parties specified in Subsection A of
21 this section; and

22 (3) a court of competent jurisdiction may fill
23 a vacancy in the position of holder.

24 Section 11. ENFORCEMENT OF ENVIRONMENTAL COVENANT.--

25 A. A civil action for injunctive or other equitable

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1 relief for violation of an environmental covenant may be
2 maintained by:

3 (1) a party to the environmental covenant;
4 (2) the agency;
5 (3) any person to whom the environmental
6 covenant expressly grants power to enforce;

7 (4) a person whose interest in the real
8 property or whose collateral or liability may be affected by
9 the alleged violation of the environmental covenant; or

10 (5) a municipality or other unit of local
11 government in which the real property subject to the
12 environmental covenant is located.

13 B. The Uniform Environmental Covenants Act does not
14 limit the regulatory authority of the agency under law other
15 than the Uniform Environmental Covenants Act with respect to an
16 environmental response project.

17 C. A person is not responsible for or subject to
18 liability for environmental remediation solely because that
19 person has the right to enforce an environmental covenant.

20 Section 12. FILE--SUBSTITUTE NOTICE.--

21 A. The department of environment shall establish
22 and maintain a file that contains all environmental covenants
23 and any amendment or termination of those covenants. The file
24 may also contain any other information concerning environmental
25 covenants and the real property subject to them that the

1 department of environment considers appropriate. The file is a
2 public record.

3 B. After an environmental covenant or an amendment
4 or termination of a covenant is filed in the file established
5 pursuant to Subsection A of this section, a notice of the
6 covenant, amendment or termination that complies with this
7 section may be recorded in the land records in lieu of
8 recording the entire covenant. Any such notice shall contain
9 the following:

10 (1) a legally sufficient description and any
11 available street address of the real property subject to the
12 covenant;

13 (2) the name of the owner of the fee simple
14 interest in the real property, the agency and the holder if
15 other than the agency;

16 (3) a statement that the covenant, amendment
17 or termination is available in a file at the department of
18 environment and that discloses the method of any electronic
19 access; and

20 (4) a statement that the notice is
21 notification of an environmental covenant executed pursuant to
22 the Uniform Environmental Covenants Act.

23 C. A statement in substantially the following form,
24 executed with the same formalities as a deed in this state,
25 satisfies the requirements of Subsection B of this section:

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1 "1. This notice is filed in the land records of the
2 county in which the real property is located pursuant to
3 Section 12 of the Uniform Environmental Covenants Act.

4 2. This notice and the covenant, amendment or termination
5 to which it refers may impose significant obligations with
6 respect to the real property described below.

7 3. A legal description of the real property is attached
8 as Exhibit A to this notice. The address of the real property
9 that is subject to the environmental covenant is [insert
10 address of real property][not available].

11 4. The name and address of the owner of the fee simple
12 interest in the real property on the date of this notice is
13 [insert name of current owner of the real property].

14 5. The environmental covenant, amendment or termination
15 was signed by [insert name and address of agency].

16 6. The environmental covenant, amendment or termination
17 was filed in the file on [insert date of filing].

18 7. The full text of the environmental covenant, amendment
19 or termination and any other information required by the agency
20 is on file and available for inspection and copying in the file
21 maintained for that purpose by the department of environment at
22 [insert address and room of building in which the file is
23 maintained]. The environmental covenant, amendment or
24 termination may be found electronically at [insert web address
25 for covenant].".

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1 Section 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--
2 In applying and construing the Uniform Environmental Covenants
3 Act, consideration shall be given to the need to promote
4 uniformity of the law with respect to its subject matter in
5 states that enact it.

6 Section 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
7 AND NATIONAL COMMERCE ACT.--The Uniform Environmental Covenants
8 Act modifies, limits or supersedes the federal Electronic
9 Signatures in Global and National Commerce Act but does not
10 modify, limit or supersede 15 USCA Section 7001(a) or authorize
11 electronic delivery of any of the notices described in 15 USCA
12 Section 7003(b).

13 Section 15. SAVING CLAUSE.--The Uniform Environmental
14 Covenants Act does not affect an action commenced, proceeding
15 brought or right accrued before the effective date of that act.

16 Section 16. SEVERABILITY.--If any part or application of
17 the Uniform Environmental Covenants Act is held invalid, the
18 remainder or its application to other situations or persons
19 shall not be affected.

20 Section 17. APPLICABILITY.--The provisions of the Uniform
21 Environmental Covenants Act apply to environmental covenants
22 arising before or after the effective date of that act, but
23 shall not apply to lands held in trust by the state pursuant to
24 the act of congress of June 20, 1910, entitled "An act to
25 enable the people of New Mexico to form a constitution and

1 state government and be admitted into the union on an equal
2 footing with the original states".

3 Section 18. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2007.

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